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AND LONGS DRUG STORE CORPORATION

n/k/a LONGS DRUG STORES, L.L.C.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SKILSTAF, INC., on behalf of itself and
all others similarly situated,

Plaintiff,

v.

CVS CAREMARK CORP.; LONGS
DRUG STORE CORPORATION; THE
KROGER CO.; NEW ALBERTSON'S,
INC.; RITE AID CORPORATION;
SAFEWAY, INC.; SUPERVALU, INC.;
WALGREEN CO.; and WAL-MART
STORES, INC.,

Defendants.

Case No: CV 09 2514 SI

**SUPPLEMENTAL MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT CVS
CAREMARK CORPORATION'S
MOTION TO DISMISS**

DATE: JANUARY 15, 2010

TIME: 9:00 A.M.

COURTROOM 10

HONORABLE SUSAN ILLSTON

COMPLAINT FILED: JUNE 5, 2009

1 Defendant CVS Caremark Corp. (“CVS Caremark”) submits this
 2 supplemental memorandum of points and authorities that require the dismissal of
 3 plaintiff’s complaint for failure to state a claim upon which relief may be granted
 4 under Federal Rule of Civil Procedure 12(b)(6), in addition to the grounds
 5 requiring dismissal set forth in defendants’ omnibus motion to dismiss.

6 MEMORANDUM OF POINTS AND AUTHORITIES – PLAINTIFF HAS FAILED TO
 7 STATE A CLAIM AGAINST CVS CAREMARK AS IT IS BLACK LETTER LAW
 8 THAT A PARENT CORPORATION IS NOT LIABLE FOR THE ACTS OF ITS
 9 SUBSIDIARIES

10 In addition to the grounds set forth in defendants’ omnibus motion to
 11 dismiss, Plaintiff has also failed to state a claim against CVS Caremark because it
 12 makes no allegations directed at any alleged behavior of CVS Caremark, and it
 13 cannot attempt to hold CVS Caremark liable for the alleged acts of its subsidiaries
 14 merely based on the parent-subsidary relationship. “It is a general principle of
 15 corporate law deeply ingrained in our economic and legal systems that a parent
 16 corporation . . . is not liable for the acts of its subsidiaries.” *See United States v.*
 17 *Bestfoods*, 524 U.S. 51, 61 (1998). Furthermore, in order to pierce the corporate
 18 veil and hold a parent corporation liable, the “plaintiff must show that inequity will
 19 result and that a subsidiary is a mere instrumentality of the parent corporation.”
 20 *Nordberg v. Trilegiant Corp.*, 445 F. Supp. 2d 1082, 1102 (N.D. Cal. 2006).
 21 “Conclusory allegations of ‘alter ego’ status are insufficient to state a claim”;
 22 “[r]ather, a plaintiff must allege specifically both of the elements of alter ego
 23 liability, as well as facts supporting each.” *Neilson v. Union Bank of California,*
 24 *N.A.*, 290 F. Supp. 2d 1101, 1116 (C.D. Cal. 2003).

25 Here, Plaintiff makes no allegations aimed directly at CVS Caremark.
 26 Instead, Plaintiff merely alleges that, because “CVS Caremark acquired Longs”
 27 (Complaint, ¶ 41), and “Longs is a wholly owned subsidiary of Defendant CVS”

(*Id.*, ¶ 42),¹ “upon information and belief, [CVS Caremark] is liable for Long’s” conduct and, “[t]hus, all references to Longs in this Complaint also apply to CVS.” (*Id.*, ¶ 41).² Such conclusory allegations, however, are directly contrary to the well-established law uniformly holding that parent corporations are not liable for acts of subsidiaries merely because of the existence of a parent-subsidiary relationship. *See Bestfoods*, 524 U.S. at 61.

Further, Plaintiff does not even attempt to make any allegations supporting that the corporate veil should be pierced such that the separate corporate identities of CVS Caremark and Longs, or the intervening subsidiary company³, should be disregarded. Plaintiff does not allege (and certainly fails to allege any facts in support) that the subsidiaries are mere instrumentalities of CVS Caremark, nor does it plead any inequities that would result in respecting the corporate structure.⁴

Accordingly, because Plaintiff makes no allegations against CVS Caremark, and does not even attempt to plead facts demonstrating that the corporate veil should be pierced to hold CVS Caremark liable for the alleged acts of its subsidiaries, Plaintiff’s claims against CVS Caremark must be dismissed. *See*

¹ Plaintiff makes similar conclusory allegations relating to CVS Caremark having supposedly “acquired certain drug stores owned by Albertsons, Inc.” (“Albertsons”), and therefore, “upon information and belief,” being automatically liable for Albertson’s conduct. (Complaint, ¶ 41). Once again, however, such conclusory and broad-sweeping assertions are directly contrary to well-established law. *See Bestfoods*, 524 U.S. at 61.

² Plaintiff then goes on to include a reference to “CVS” in several headings outlining Longs and Albertsons’ alleged behavior. (*See* Complaint, ¶¶ 277-81, 289-90).

³ Longs is not even directly owned by CVS Caremark. Rather, Longs is a wholly-owned subsidiary of CVS Pharmacy, Inc., which is a wholly-owned subsidiary of CVS Caremark Corp.

⁴ Plaintiff also fails to allege any factors signaling that it would be inequitable to respect the separate corporate identities, such as “inadequate capitalization, commingling of assets, [or] disregard of corporate formalities.” *See Nordberg v. Trilegiant Corp.*, 445 F. Supp. 2d 1082, 1102 (N.D. Cal. 2006).

1 *Nordberg*, 445 F. Supp. 2d at 1102-03 (granting motion to dismiss claims against
 2 parent corporation because plaintiffs failed to plead factors signaling that it would
 3 be inequitable to separate the corporate identities, and because “plaintiffs do not
 4 allege, absent conclusory statements, that [subsidiary] is merely an instrumentality
 5 of [parent]”); *Neilson*, 290 F. Supp. 2d at 1116 (holding that “[s]ince the complaint
 6 does not sufficiently allege Comerica’s liability on an alter ego theory, the claims
 7 against it must be dismissed”).

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 9 Dated: September 11, 2009 FOLEY & LARDNER LLP

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